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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/574,441	05/19/2000	J. Stuart Cumming	5891	8630

7590

02/28/2003

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EXAMINER

WILLSE, DAVID H

ART UNIT

PAPER NUMBER

3738

DATE MAILED: 02/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Applicant N .

09/574,441

Examiner

Dave Willse

Applicant(s)

CUMMING, J. STUART

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 January 2003.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 15.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Claims 1-38 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 1, line 3, "the outer periphery" lacks a proper antecedent basis. In claim 27, line 4, "said optic" lacks a proper antecedent basis. In claim 30, line 7, "the lugs *and loops*" (emphasis added) lacks a proper antecedent basis. *Other errors were noted.*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 27-29, 33, 34, and 38 are rejected under 35 U.S.C. 102(b) as being anticipated by Hagege et al., FR 2 734 472 A1, which discloses a pair of relatively rigid spaced-apart frame members **14** and **15** and a web **11** secured to and extending between the frame members and having thereon an optic **21**.

Claims 31 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hagege et al., FR 2 734 472 A1. Integral molding and spot welding are quite common in the art and would have been obvious means for affixing elements **14** and **15** to the rest of the haptic sections **11** in order to provide stable fixation for long-term implantation.

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Claims 27-29, 33, and 38 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Gorban et al., RU 2026040 C1.

Claims 31 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gorban et al., RU 2026040 C1. Integral molding and spot welding to secure the web 2 to the frame members 4 would have been obvious for reasons cited above.

Claims 27-29, 31, 33, 37, and 38 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Guilbert et al., FR 2 728 458 A1: Figure 6. Regarding claim 37, the transition between the soft crenallures 22 and the longitudinal portions of the frame members is deemed to be relatively soft and the intraocular lens implant is *capable* of being folded especially because of the optic being formed of a flexible material like silicone (page 6, line 18).

Claims 27, 31, 33, 34, and 38 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Guilbert et al., FR 2 728 459 A1, which discloses frame members 31 having end portions in the form of “mushroom caps” and lateral edges on the outer periphery of the members 31 themselves. The web is viewed as the inner open ring (e.g., Figure 5).

Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over Guilbert et al., FR 2 728 458 A1 or FR 2 728 459 A1. Spot-welding would have been obvious for reasons presented above.

Claims 27-29, 31, and 33 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Rochels, DE 36 26 869 A1.

Claims 1-8, 12-19, 23, 25, 26, 34, 35, and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rochels, DE 36 26 869 A1, in view of Haworth, GB 2 226 246 A. Because of the threaded engagement or the bayonet joint in Rochels, limited optic 1 movement relative to

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the frame 2 and 3 is obtained (via a tool, at least); therefore, Rochels possesses all of the limitations of claim 1 and others except, apparently, for posterior vaulting. However, such a feature was quite common in the art, as seen from the drawings of Haworth, for example, and to so modify the haptics 3 of Rochels would have been obvious to the ordinary practitioner, who would have been motivated by the advantages discussed on page 9 of Haworth. Regarding claims 6 and 7, widened portions in the slots would have been obvious, if not inherent, from the nature of bayonet joints. Regarding claims 34 and 35, a flexible optical material would have been obvious in order to minimize the incision size during subsequent procedures for replacing the optical part 1.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Attention is directed to the figure of RU 2 026 652 C1.

The Applicant's remarks have been reviewed. Regarding present claim 27, the term "web" is deemed to be broad and is defined as "[a] fold of skin or membranous tissue" or as "[a] thin metal plate or strip" (*Webster's II New Riverside University Dictionary*, 1984). Therefore, the examiner disagrees with the Applicant's comments on Hagege et al. and Gorban et al. relative to claim 27. Other arguments are adequately addressed in the above grounds of rejection. The new or modified grounds of rejection were necessitated by the added language pertaining to haptic "lateral edges disposed on the outer periphery of the frame" (e.g., claim 1, lines 2-3) and by the added claims. Therefore:


THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dave Willse, whose telephone number is (703) 308-2903. The supervisor, Corrine McDermott, can be reached at (703) 308-2111. The receptionist's phone number is (703) 308-0858, and the main FAX numbers are (703) 305-3591, 3590.

dhw: D. Willse
February 25, 2003


DAVE WILLSE
PRIMARY EXAMINER
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